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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/729,760	12/05/2003	Kenneth C. Boyle	P06090US00	3212
27139	7590	05/11/2006		
MCKEE, VOORHEES & SEASE, P.L.C. ATTN: MAYTAG/ WHIRLPOOL 801 GRAND AVENUE, SUITE 3200 DES MOINES, IA 50309-2721			EXAMINER COOLEY, CHARLES E	
			ART UNIT	PAPER NUMBER
			1723	

DATE MAILED: 05/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/729,760	Applicant(s) BOYLE ET AL.	
	Examiner Charles E. Cooley	Art Unit 1723	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 March 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 10-12 and 14-17 is/are rejected.
- 7) ☒ Claim(s) 5-9 and 13 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 November 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

NON-FINAL OFFICE ACTION AFTER RCE

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 1 MAR 2006 has been entered.

Drawings

2. The replacement sheets filed 18 NOV 2005 are approved.

Specification

3. The abstract is acceptable.
4. The title is acceptable.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

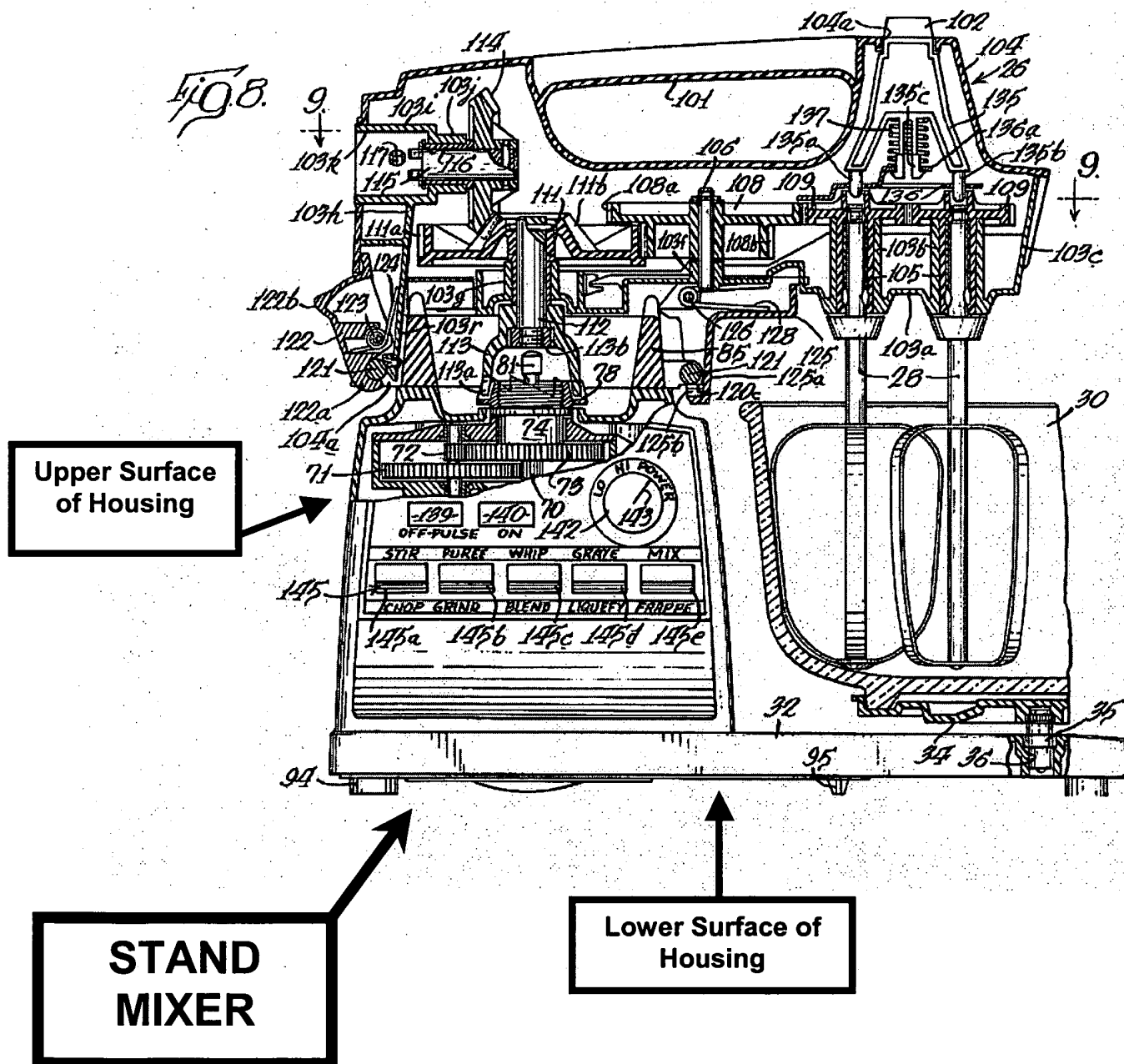
7. Claims 1, 2, 4, 11, 12, 15, 16, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ernster et al. (US 3,951,351) in view of Vastano (US 6,733,146).

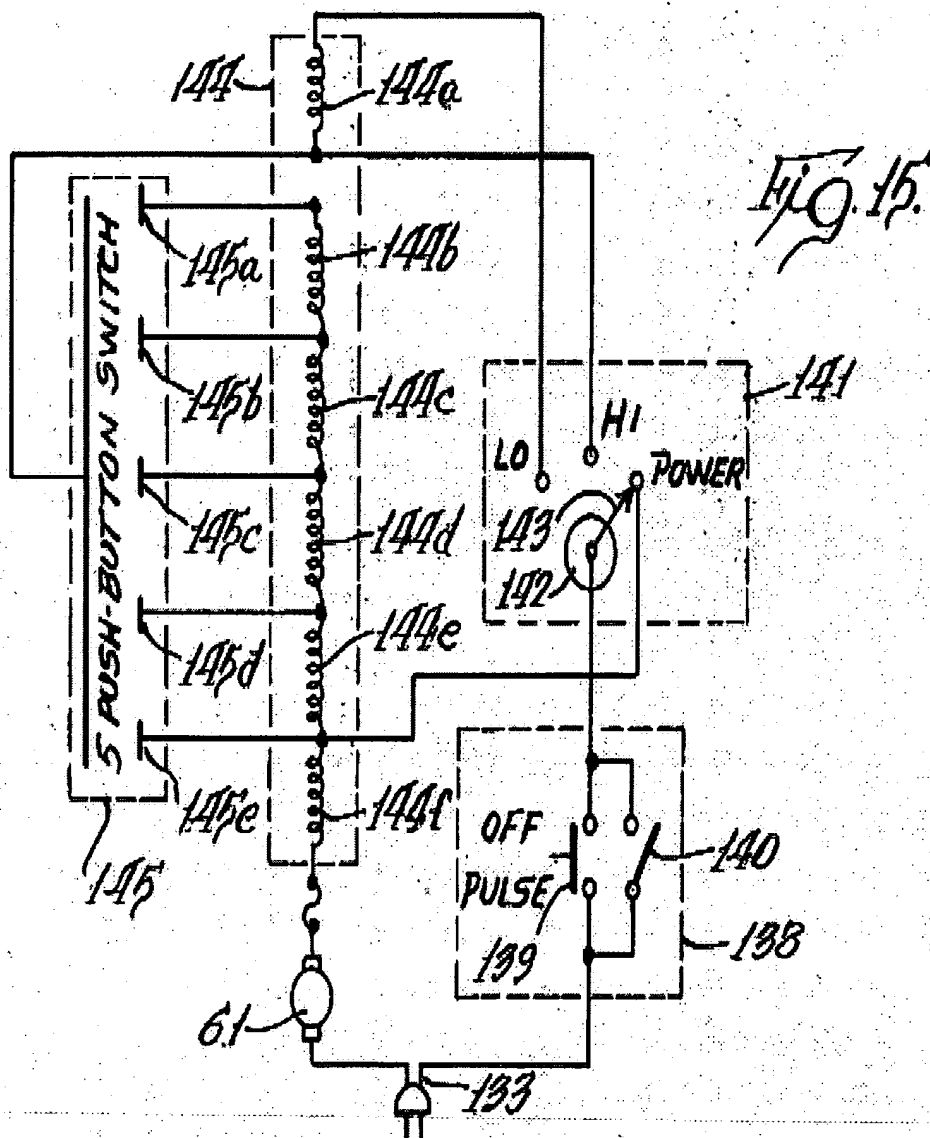
The patent to Ernster et al. '351 discloses a stand mixer and method with a control panel (Figs. 1, 2, 4, 8, and 15) with a mixer housing 24, 32 having an upper surface (as labeled below) disposed above a lower surface 32; a motor 46 within the housing connected to a rotatable output shaft 62; a control panel (Figs. 1, 2, and 8) on the housing having a power switch button 140 for starting the motor; an adjustable rotary dial speed selector 142 to control the motor and select motor speed; a speed indicator 143 with multiple speed indicia at speed locations (Fig. 8) located on the upper surface of the housing; the speed indicator with multiple speed locations disposed radially from an axis of the dial as seen in Fig. 8; the control panel being located on the upper surface of the housing as seen below; the rotary dial 142 having a standby mode

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or off mode (at "POWER"); the power button 140 having a standby mode where the motor is stopped as seen in Fig. 15. The patent to Ernster et al. '351 thus discloses the recited stand mixer and method substantially as claimed with the exception of an illuminator on the rotary dial. The patent to Vastano discloses a rotary dial 10 for indicating an operative condition of a home appliance and teaches its use with "electrical appliances that have a rotating knob operating an electrical switch" (col. 1, lines 7-13 and col. 4, lines 2-7). Accordingly, it would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to have substituted the rotary dial in the device and method of Ernster et al. '351 with a rotary dial having an illuminator connected thereto as taught by Vastano for the purposes of indicating the active condition of an appliance (col. 2, lines 25-27) and to provide a bright visual indication corresponding to an operative condition of the appliance (col. 3, line 48 through col. 4, line 2).

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8. Claims 1, 2, 4, 11, 12, 15, 16, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lin (US 6,599,006 B1) in view of Vastano (US 6,733,146).

The patent to Lin '006 discloses a mixer control method and a mixer with a housing or stand (and thus a "STAND MIXER") as labeled below; the mixer housing having an upper surface (as labeled below) disposed above a lower surface (as labeled below); a motor within the housing connected to a rotatable output shaft) as labeled below); a control panel on the housing having an adjustable rotary dial speed selector 1 to control the motor and select motor speed; a power switch button 2 for starting the motor located in the center of the rotary dial 1; a speed indicator with multiple speed indicia at speed locations (Fig. 2) located on the upper surface of the housing; the speed indicator with multiple speed locations disposed radially from an axis of the dial as seen in Figs. 2, 3, and 5; the control panel being located on the upper surface of the housing as seen below; the rotary dial 1 having a standby mode (at "IL") and an off mode (at "O"); the power button 2 having a standby or non-actuated mode where the motor is stopped. The patent to Lin thus discloses the recited stand mixer and method substantially as claimed with the exception of an illuminator on the rotary dial. The patent to Vastano discloses a rotary dial 10 for indicating an operative condition of a home appliance and teaches its use with "electrical appliances that have a rotating knob operating an electrical switch" (col. 1, lines 7-13 and col. 4, lines 2-7). Accordingly, it would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to have substituted the rotary dial in the device and method of Lin with a rotary dial having an illuminator connected thereto as taught by Vastano for the

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purposes of indicating the active condition of an appliance (col. 2, lines 25-27) and to provide a bright visual indication corresponding to an operative condition of the appliance (col. 3, line 48 through col. 4, line 2).

More particularly, the patent to Lin discloses an improved structure of a control switch, and in particular, a control switch for use in food processor, juice blender, etc. Accordingly, it is an object of the present invention to provide an improved structure of a control switch for a food processor having a fully automatic control key and a disc-type rotating switch mounted with a stop button, speed I button, speed II button, and an instantaneous speed button, characterized in that the fully automatic control key is preset by means of an IC program located within the center position of the rotating shaft of the rotating switch and is controllable by pressing of the key, the logic mechanism of the operation includes a start action, in operation by pressing the key; a fast and slow setting, an instantaneous setting, in operation in rotating, stopping, rotating and stopping sequence; a stop action, including automatic stopping after operation has been completed and stopping action when the stop button is pressed; and a timing setting, allowing time setting of start action, fast speed rotation, slow speed rotation, instantaneous speed rotation, and stop rotation, and the timing of setting is in the sequence of fast speed rotation, slow speed rotation and instantaneous speed rotation.

Yet another object of the present invention is to provide an improved structure of a control switch of a food processor, wherein the fully automatic control key is provided within the disc, facilitating the mounting of the wires of the integrated circuit for the IC program.

Referring to FIG. 2, there is shown a disc-type rotating switch 1. The rotating switch 1 comprises a stop button, speed I rotation, speed II rotation, and an instantaneous rotation. The rotating switch 1 is in combination with a single fully automatic control key 2 which contains an IC program positioned at the central position of the rotating shaft 11 of the rotating switch 1. The control key 2 is operated by pressing of the key. For instance, the first pressing of the key 2, which enables automatic mode and then stops (with a warning), or in the course of automatic operation, the key 2 is pressed once to cause the rotation to stop.

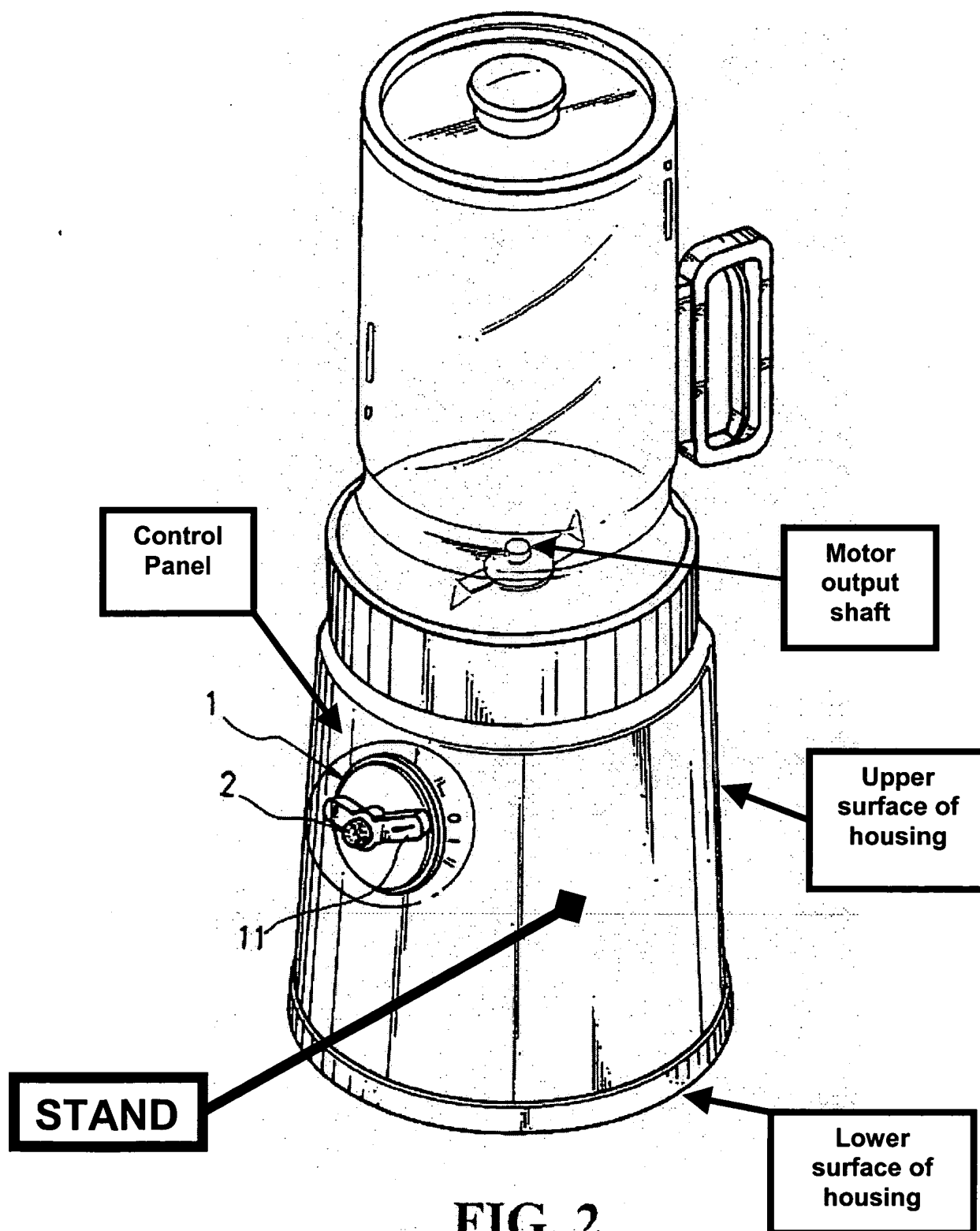
As shown in FIG. 3, the automatic control key 2 can be positioned at an appropriate position of the rotating switch 1, or may not be positioned within the rotating switch 1. As shown in FIG. 4, the position of the control key 2 is positioned at a place where the wires of the circuit board do not affect the control switch 1.

Referring to FIG. 5, there is shown the operation of the fully automatic control key 2. The operation steps are as follows: (a) Start (initial): The key is pressed and the operation starts; (b) Fast speed rotation, slow speed rotation setting: presetting a time to provide a fast speed rotation and a slow speed rotation. This will allow a food processor to change speed of rotation instantaneously; (c) Instantaneous rotation setting: provide setting to start rotation and to stop rotation. This provides the effect of re-mixing or another cutting of food action. (d) Stop action: This provides two actions, either stop the rotation when the entire processing is completed or stop rotation when the control switch is pressed; (e) Time setting: enables the setting of time for the start operation, fast speed rotation, slow speed rotation and instantaneous rotation. In accordance with

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the present invention, the setting of the logic mechanism is in fast speed rotation, slow speed rotation and instantaneous speed rotation.

In accordance with the present invention, the advantages are as follows: (i) The control key does not occupy space and will not affect the control switch, and the operation of the key is fully automatic. (ii) No monitoring of the food processor is needed as the control key provides automatic operation. (iii) The operation can be completed within a preset time. Most importantly, after the operation sequence is completed, the operation is stopped automatically (iv) The stop setting can be used in the operation. That is when the stop button is pressed, the rotation is stopped.



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9. Claims 3, 10, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lin (US 6,599,006 B1) in view of Vastano (US 6,733,146) as applied to claims 1, 2, and 12 above, and further in view of Piland (US 5,347,205).

Lin (US 6,599,006 B1) does not disclose the recited lens or lights/illuminators. The patent to Piland discloses a mixer with a control panel 12 having lights/illuminators 19, 21, 31, and 32-38 in the form of light emitting diodes that inherently have a lens that the produced light passes through. It would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to have provided the control panel of Lin with lights/illuminators in the form of light emitting diodes with lens as suggested by Piland for the purpose of providing the operator with a visual indication of the operating status/readiness of the mixer and the speed selection of the mixer (col. 4, lines 6-9).

With regard to claim 3, it is believed obvious that the combination of Lin in view of Piland above would inherently and necessarily locate the lens at the respective indicia "IL", "O", "I", and "II" adjacent the rotary dial 1 in Lin such that the proper indicia and corresponding speed selection is indicated to a user, via illumination of the lens. To locate the lens at other locations not specifically correlated to the speed indicia would be nonsensical.

10. Claims 3, 10, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ernster et al. (US 3,951,351) in view of Vastano (US 6,733,146)

as applied to claims 1, 2, and 12 above, and further in view of Piland (US 5,347,205).

Ernster et al. (US 3,951,351) does not disclose the recited illuminators. The patent to Piland discloses a mixer with a control panel 12 having lights/illuminators 19, 21, 31, and 32-38 in the form of light emitting diodes that inherently have a lens that the produced light passes through. It would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to have provided the control panel of Ernster et al. (US 3,951,351) with lights/illuminators in the form of light emitting diodes with lens as suggested by Piland for the purpose of providing the operator with a visual indication of the operating status/readiness of the mixer and the speed selection of the mixer (col. 4, lines 6-9).

With regard to claim 3, it is believed obvious that the combination of Ernster et al. (US 3,951,351) in view of Piland above would inherently and necessarily locate the lens at the respective indicia adjacent the rotary dial 142 in Ernster et al. such that the proper indicia and corresponding speed selection is indicated to a user, via illumination of the lens. To locate the lens at other locations not specifically correlated to the speed indicia would be nonsensical.

Allowable Subject Matter

11. Claims 5-9 and 13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Amendment

12. Applicant's arguments filed 1 MAR 2006 have been fully considered but they are not deemed to be persuasive.

Again, it is noted that it is incumbent upon the examiner to give terminology in a pending application's claims its broadest reasonable interpretation (*In re Zletz*, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989)). Applicant asserts that the examiner's interpretation of "stand mixer" is overly broad and inaccurate. The examiner disagrees. The subject matter described in the Lin patent can reasonably be deemed a "stand mixer" as the device is clearly a mixer that includes a stand as depicted in the marked-up version of Figure 2 above. The preamble of the claims merely recite the two words "stand mixer", yet the bodies of the claims hardly set forth any peculiar structure of the typical stand mixer. It appears Applicant believes the term "stand mixer" mystically connotes a multitude of structural elements not found in the Lin device. However, such elements are noticeable devoid from the bodies of the rejected claims. It is well settled that features not claimed may not be relied upon in support of patentability. *In re Self*, 671 F.2d 1344, 213 USPQ 1 (CCPA 1982). Although a claim should be interpreted in light of the specification disclosure, it is generally considered improper to read limitations contained in the specification into the claims. See *In re Prater*, 415 F.2d 1393, 162 USPQ 541 (CCPA 1969) and *In re Winkhaus*, 527 F.2d 637, 188 USPQ 129 (CCPA 1975), which discuss the premise that one cannot rely on the specification to impart limitations to the claim that are not recited in the claim.

Regarding *Phillips v. AWH Corp.*, 415 F.3d 1303 (7/12/05) (*En Banc*), the examiner finds nothing in the intrinsic record that necessarily mandates that the Lin device can under no circumstances be deemed a “stand mixer”. Accordingly, the examiner holds that the term “stand mixer” would not exclude the type of mixer where a mixing receptacle rests on a housing or stand disposed underneath the receptacle as in Lin.

As set forth in the final rejection, the pith of Applicant’s arguments is again primarily directed to two words found in the preamble of the claims, namely a “stand mixer”. First, it is without question that the prior art devices are indeed mixers and the examiner believes that said devices can reasonably be deemed stand mixers within the broad scope of that term (*In re Zletz*, *supra*) since the Lin and Ernster mixers having housings or stand structure (as labeled in the Figures accompanying the rejections) that supports other elements of the mixer (such as the mixing receptacle and mixer tools). Thus, for Applicant to assert that the prior art devices are not stand mixers is again not a compelling argument.

Furthermore, what particular structure does the recitation of a “stand mixer” necessarily invoke? The claimed mixer structure is quite broadly set forth with expansive terms such a housing with surfaces, a motor, and details of the control panel. This broad language hardly supports Applicant’s contention that anticipation is voided since the prior art are not stand mixers (whatever structure that may or may not encompass).

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Applicant further argues intended uses of the prior art mixers (such as food processing, blending, chopping, slicing, dicing, cutting. etc.), however, these remarks have not been afforded any patentable weight because it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647; *In re Sebald*, 122 USPQ 527; *In re Lemin et al.*, 140 USPQ 273; *In re Sinex*, 135 USPQ 302; *In re Pearson*, 181 USPQ 641. It is well settled that the intended use of an apparatus is not germane to its patentability. *In re Self*, 671 F.2d 1344, 213 USPQ 1 (CCPA 1982); *In re Yanush*, 477 F.2d 958, 177 USPQ 705 (CCPA 1973); *In re Finsterwalder*, 436 F.2d 1028, 168 USPQ 530 (CCPA 1971); *In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967).

13. The declaration under 37 CFR 1.132 filed 18 NOV 2005 remains insufficient to overcome the rejections of claims based upon the applied prior as set forth in the last or in this Office action because it merely sets forth opinions regarding the uses of various kitchen appliances and said opinions are not commensurate with the scope of the pending claims. The intended uses of the various appliances referred to by inventor Rob Brueckner are not germane to patentability as discussed above. The assertions regarding the apparent structure of a stand mixer are noted, but such structure is still not present in the pending claims.

The two pages from the Sears website do nothing to establish that the device of Lin cannot be construed as the recited stand mixer under the patent laws as noted

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above. The Sears printout only establishes that the mixers shown on that page are described as stand mixers, not that a myriad of other devices could conceivably be considered stand mixers within the context of the claimed invention and intrinsic record.


In conclusion, the amendments made in the instant application are not deemed of a substantive nature to define over the prior art and thus the rejections are considered proper.

Conclusion

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles E. Cooley whose telephone number is (571) 272-1139. The examiner can normally be reached on Mon-Fri. All official facsimiles should be transmitted to the centralized fax receiving number 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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A handwritten signature in black ink, appearing to read "Charles", followed by a stylized, wavy flourish.

Charles E. Cooley
Primary Examiner
Art Unit 1723

9 May 2006